

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application : **10/538,207**
Applicant(s) : **KELLY et al.**
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Examiner : **NGUYEN, My Xuan**
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Title: **MOBILE DEVICE THAT USES REMOVABLE MEDIUM FOR PLAYBACK OF CONTENT**

Mail Stop: **APPEAL BRIEF - PATENTS**
Commissioner for Patents
Alexandria, VA 22313-1450

APPEAL UNDER 37 CFR 41.37

Sir:

This is an appeal from the decision of the Examiner dated 23 January 2008, rejecting claims 1-32 of the subject application, at least one of the claims having been at least twice rejected.

This paper includes (each beginning on a separate sheet):

- 1. Appeal Brief;**
- 2. Claims Appendix;**
- 3. Evidence Appendix; and**
- 4. Related Proceedings Appendix.**

APPEAL BRIEF

I. REAL PARTY IN INTEREST

The above-identified application is assigned, in its entirety, to **Koninklijke Philips Electronics N. V.**

II. RELATED APPEALS AND INTERFERENCES

Appellant is not aware of any co-pending appeal or interference that will directly affect, or be directly affected by, or have any bearing on, the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1-32 are pending in the application.

Claims 1-32 stand rejected by the Examiner under 35 U.S.C. 102(e).

These rejected claims are the subject of this appeal.

IV. STATUS OF AMENDMENTS

No amendments were filed subsequent to the rejection in the Office Action dated 23 January 2008.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The invention relates to providing audio, visual, or other content to a device, such as a mobile phone, connected to a wireless network (Applicants' FIG. 1, page 1, lines 4-5). The mobile device (10) contacts a service (70) via the wireless network (50), and the service (70) controls the presentation of the content at the mobile device (10) (page 2, lines 12-14). To avoid having to send the content via the wireless network (50), the mobile device (10) includes a media drive (20) that is configured to read the content from a medium (22) inserted in the drive (20) of the mobile device (10) (page 2, lines 1-6).

Independent claim 1 recites a system for providing playback of media content to a user, the system comprising (FIG. 1):

a portable wireless device (10), the wireless device (10) having a media drive (20) (page 3, lines 4-6) and an application that reads and plays back content from a medium (22) inserted in the media drive (20) (page 4, lines 8-9); and

a service (70) that communicates with the wireless device (10) via a wireless network (50) (page 3, lines 28-31), the service (70) providing control commands to the application program for controlling playback of content from the medium (22) when inserted in the media drive (20) (page 4, lines 6-9).

Independent claim 7 recites a portable wireless device (10) that interfaces with a wireless network (50), the wireless device (10) comprised of (FIG. 2):

a media drive (20) (page 3, lines 7-9); and

an application that plays back content from a medium (22) when inserted in the media drive (20), the application playing back content from the medium (22) based upon control commands received from a service (70) via the wireless network (50) (page 4, lines 4-9).

Independent claim 15 recites a service (70) for use in providing playback of media content to a user, the service (70) generating and transmitting control commands via a network to a portable wireless device (10), the control commands controlling playback of content of a medium (22) inserted in a media drive (20) of the wireless device (10) (page 4, lines 4-10).

Independent claim 26 recites a medium (22) that contains content (page 4, line 13), the medium (22) being insertable into a media drive (20) of a portable wireless device (10) (page 3, lines 4-6), the medium (22) being readable for playback of the content by an application stored in the wireless device (10) (page 3, lines 19-21) when control commands are received by the application from a remote service (70) (page 4, lines 4-10).

Independent claim 28 recites an application program stored on a portable wireless device (10) (page 3, lines 19-21), the application reading and playing back content from a medium (22) inserted into a media drive (20) of the wireless device (10) in accordance with control commands received by the wireless device (10) from a remote service (70) via a network (50) (page 3, lines 25-31; page 4, lines 4-10).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-32 stand rejected under 35 U.S.C. 102(e) over Harrington (USPA 2002/0156909).

VII. ARGUMENT

Claims 1-32 stand rejected under 35 U.S.C. 102(e) over Harrington

MPEP 2131 states:

"A claim is anticipated only if ***each and every element*** as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The ***identical invention*** must be shown in as ***complete detail*** as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Claims 1-6

Claim 1 claims a system that includes a portable wireless device having a media drive and an application that reads and plays back content from a medium inserted in the media drive, and a service that provides control commands to the application program for controlling playback of content from the medium when inserted in the media drive.

Harrington does not teach a portable wireless device that includes a media drive, and Harrington does not teach a service that provides control commands for controlling playback of content from the medium when inserted in the media drive.

Harrington teaches, in FIG. 1, a client device 112, which may be wireless (806 in FIG. 8), that is configured to receive commands from a server 116, program-related signals 108 from a signal source 102, and flash movies 122 from a variety of sources. The program related signals 108 provide an identification of the location (URI) of flash movies 122 that are related to currently playing program material 104, such as a broadcast television program. The client device 112 downloads and plays the flash movies 122 either automatically or based on the commands from the server 116, or a combination of both. The flash movies 122 may be located on a portable medium, such as a CD or DVD.

The Office action asserts that Harrington's client device 112 includes a media drive for reading the flash movies. The applicants respectfully disagree with this assertion. The Office action relies upon Harrington's paragraphs [0014], [0043], and [0059] to support this assertion. The applicants respectfully maintain that paragraphs [0014], [0043] and [0059] each refer to the flash movie being accessed from a source that is remote from the client device, and not from a media drive on the client device.

Harrington's paragraph [0014] states:

"Systems consistent with the present invention provide a system and method for relating Temporal Signals (which appear, for example, on a television broadcast, a VHS or Beta tape, CD-ROM, DVD, CD, memory stick, or other medium) with a Flash movie on a client device (accessible, for example, via the Internet). Such systems do not require lengthy downloads, specific client devices or operating systems, specific data formats or similar constraints in order to implement the features and functions identified herein. Preferably, such a system is implemented on a client device capable of hosting a Web browser. As such, the present invention is described preferably in the context of a client device using a Web browser for supporting its operations."

As can be seen, Harrington's [0014] specifically distinguishes between the media devices (VHS or Beta tape, CD-ROM, DVD, CD, memory stick, or other medium) and the Flash movie that is on the client device, and does not teach that these media devices are included within the client device, as claimed.

Harrington's paragraph [0047] states:

"However, it is anticipated that as Flash Movies become more ubiquitous, devices will be provided for presenting Flash Movies without requiring or utilizing the full capabilities of a Web browser. As such, the client device 112 preferably may be configured to provide a platform for receiving URI(s) and presenting Flash movies 122 in conjunction with or separate from the reception and presentation of a programming signal 104. Such a client device 112 may not require or utilize the full capabilities of a Web browser operating on a personal computer or similar device. Thus, it is to be appreciated that for the system 100 shown in FIG. 1, the client device 112 provides the capabilities of identifying, locating, retrieving and presenting Flash movies in conjunction with a programming signal by utilizing URI(s) or other schemes for identifying local and/or remotely located Flash movies."

As can be seen, Harrington's paragraph [0043] also does not teach that the client device 112 includes a media drive.

Harrington's [0059] states:

"A second exemplary system 400 consistent with the present invention provides for server-side control of a Flash movie 412 running on a client device. Referring to FIG. 4, an embodiment of the second system 400 of the present invention is illustrated. In this embodiment, a client device 416 is connected to a network 410, such as a wireless network, an intranet, an extranet, or the Internet. Preferably, the Flash movie 412 resides at a site on the network accessible via an URI entered into a browser running on the client device 416, and the Flash movie 412 is loaded on the client device 416. Alternatively, the Flash movie 412 may be loaded from a CD-Rom, a floppy disk, or from any memory element connected to the client device. Preferably, the Flash movie 412 loaded on the client device 416 is a master movie having core functionality as discussed herein. The present invention, however, works equally well with Flash movies 412 having any degree of functionality."

As can be seen, Harrington's [0059] does not teach a client device that includes a media drive. Of particular note, Harrington's [0059] teaches "the Flash movie 412 may be loaded from a CD-Rom, a floppy disk, or from any memory element connected to the client device". The applicants respectfully maintain that a media device that is 'connected' to a client device does not correspond to a media drive that is included in the client device. Harrington uses this same 'connected' phrase with reference to FIG. 6:

"the Flash movie 612 may be downloaded directly to the client device from a CD-ROM, a floppy, or from a memory device connected with the client device." (Harrington, [0068] lines 13-15)

The applicants respectfully maintain that the use of the term "downloaded" with reference to media devices that are 'connected' to the client device necessarily implies that the media devices are not included within the client device. As the term is conventionally used in the art, 'downloading' is always associated with the transfer of information from one device to another device, and is not used in reference to the transfer of information within the same device.

In paragraphs [0014] and [0037], Harrington specifically teaches obtaining Flash movies from a remote location (the Internet) or from a local device (DVD player), respectively. In paragraph [0043], Harrington specifically refers to "receiving" URIs and "retrieving" the Flash movies, and does not teach that the remote device includes a media drive. In like manner, in paragraphs [0059] and [0068], Harrington specifically refers to media devices that are 'connected' to/with the client device. In each of the references to Harrington, Harrington teaches accessing the playback content from a device that is remote from the client device.

Because Harrington fails to teach a portable wireless device that includes a media drive, and fails to teach a service that provides control commands for controlling playback of content from the medium when inserted in a media drive of the wireless device, the applicants respectfully maintain that the rejection of claims 1-6 under 35 U.S.C. 102(e) over Harrington is unfounded, per MPEP 2131, and should be reversed by the Board.

Claims 7-14

Claim 7 claims a portable wireless device that comprises a media drive and an application that plays back content from a medium when inserted in the media drive based upon control commands received from a service via the wireless network.

As noted above, Harrington fails to teach a portable wireless device that comprises a media drive; Harrington also does not teach an application that plays back content from a medium when inserted in a media drive on a wireless device based upon control commands received from a service. Accordingly, the applicants respectfully maintain that the rejection of claims 7-14 under 35 U.S.C. 102(e) over Harrington is unfounded, per MPEP 2131, and should be reversed by the Board.

Claims 15-25

Claim 15 claims a service that transmits control commands to a portable wireless device for controlling playback of content of a medium inserted in a media drive of the wireless device.

As noted above, Harrington fails to teach a service that transmits control commands to a portable wireless device for controlling playback of content of a medium inserted in a media drive of the wireless device. Accordingly, the applicants respectfully maintain that the rejection of claims 15-25 under 35 U.S.C. 102(e) over Harrington is unfounded, per MPEP 2131, and should be reversed by the Board.

Claims 26-27

Claim 26 claims a medium that contains content, the medium being insertable into a media drive of a portable wireless device, the medium being readable for playback of the content by an application stored in the wireless device when control commands are received by the application from a remote service.

As noted above, Harrington fails to teach a medium that is readable on a media drive of a portable wireless device for playback when control commands are received from a remote service by an application on the wireless device. Accordingly, the applicants respectfully maintain that the rejection of claims 26-27 under 35 U.S.C. 102(e) over Harrington is unfounded, per MPEP 2131, and should be reversed by the Board.

Claims 28-32

Claim 28 claims an application program on a wireless device for reading and playing back content from a medium inserted into a media drive of the wireless device in accordance with control commands received from a remote service.

As noted above, Harrington fails to teach an application program on a wireless device for reading and playing back content from a medium inserted into a media drive of the wireless device in accordance with control commands received from a remote service. Accordingly, the applicants respectfully maintain that the rejection of claims 28-32 under 35 U.S.C. 102(e) over Harrington is unfounded, per MPEP 2131, and should be reversed by the Board.

CONCLUSIONS

Because Harrington does not teach a portable wireless device that includes a media drive, and does not teach a service that provides control commands for controlling playback of content from the medium when inserted in the media drive, the applicants respectfully request that the Examiner's rejection of claims 1-32 under 35 U.S.C. 102(b) be reversed by the Board, and the claims be allowed to pass to issue.

Respectfully submitted

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CLAIMS APPENDIX

1. A system for providing playback of media content to a user, the system comprising:
 - a) a portable wireless device, the wireless device having a media drive and an application that reads and plays back content from a medium inserted in the media drive;
 - b) a service that communicates with the wireless device via a wireless network, the service providing control commands to the application program for controlling playback of content from the medium when inserted in the media drive.
2. The system as in Claim 1, wherein the portable wireless device is a mobile phone.
3. The system as in Claim 1, wherein the media drive is one selected from the group of optical disc drive, magnetic disc drive and a flash memory card interface.
4. The system as in Claim 1, wherein the service is provided from a website that interfaces with the wireless network via the Internet.
5. The system as in Claim 1, wherein the control commands provided by the service control at least one of the selection and order of content played back from the medium.
6. The system as in Claim 5, wherein the service downloads advertisements to the wireless device and also provides control commands to the application to play the advertisements along with playback of content from the medium.

7. A portable wireless device that interfaces with a wireless network, the wireless device comprised of:

- a) a media drive;
- b) an application that plays back content from a medium when inserted in the media drive, the application playing back content from the medium based upon control commands received from a service via the wireless network.

8. The device of Claim 7, wherein the media drive is one selected from the group of optical disc drive, magnetic disc drive and a flash memory card interface.

9. The device of Claim 7, wherein the medium contains at least one of audio content and video content.

10. The device of Claim 9, wherein the received control commands control at least one of the selection and order of content played back by the application.

11. The device of Claim 9, wherein the received control commands further control playback of one or more advertisements by the application.

12. The device of Claim 11, wherein the advertisements are played back in between the content selected for playback.

13. The device of Claim 11, wherein the advertisements are stored on the medium inserted in the media drive.

14. The device of Claim 11, wherein the advertisements are downloaded from the service to the device.

15. A service for use in providing playback of media content to a user, the service generating and transmitting control commands via a network to a portable wireless device, the control commands controlling playback of content of a medium inserted in a media drive of the wireless device.

16. The service as in Claim 15, wherein the service transmits the control commands to the wireless device via a wireless network.

17. The service as in Claim 16, wherein the service transmits the control commands to the wireless network via the Internet.

18. The service as in Claim 15, wherein the control commands are generated using an identification of the content of the medium received by the service from the portable wireless device.

19. The service as in Claim 18, wherein the control commands generated by the service control at least one of the selection and order of content played back from the medium by the portable wireless device.

20. The service as in Claim 15, wherein the control commands are generated using an identification of the user received by the service from the portable wireless device.

21. The service as in Claim 20, wherein the identification of the user is used by the service to retrieve a preference of the user from memory.

22. The service as in Claim 15, wherein the control commands further control playback of advertisements by the portable wireless device.

23. The service as in Claim 22, wherein the service downloads advertisements to the portable wireless device for playback.

24. The service as in Claim 22, wherein the control commands controlling playback of advertisements are generated by the service using an identification of the user received by the service from the portable wireless device.

25. The service as in Claim 24, wherein the identification of the user is used by the service to retrieve a preference of the user from memory.

26. A medium that contains content, the medium being insertable into a media drive of a portable wireless device, the medium being readable for playback of the content by an application stored in the wireless device when control commands are received by the application from a remote service.

27. The medium as in Claim 26, wherein the medium is one selected from the group of optical disc, magnetic disc and flash memory card.

28. An application program stored on a portable wireless device, the application reading and playing back content from a medium inserted into a media drive of the wireless device in accordance with control commands received by the wireless device from a remote service via a network.

29. The application program as in Claim 28, wherein the control commands received from the remote service control at least one of the selection and order of content played back from the medium by the application.

30. The application program as in Claim 28, wherein the application program reads an identification of the content of the medium and the wireless device transmits the identification to the remote service via the network, the control commands being generated by the remote service using the identification.

31. The application program as in Claim 28, wherein the application program receives control commands from the remote service for playback of advertisements contained on the medium.

32. The application program as in Claim 28, wherein the application program receives control commands from the remote service for playback of advertisements downloaded to the wireless device via the network.

EVIDENCE APPENDIX

No evidence has been submitted that is relied upon by the appellant in this appeal.

RELATED PROCEEDINGS APPENDIX

Appellant is not aware of any co-pending appeal or interference which will directly affect or be directly affected by or have any bearing on the Board's decision in the pending appeal.